EXHIBIT A
HAWAIʻI ARBITRATION RULES

(Rules Governing the Court
Annexed Arbitration Program)

Appended to the Rules of the Circuit Courts of the State of Hawaiʻi as Exhibit A pursuant to Circuit Court Rule 34, added January 22, 1986, with amendments as noted.

HAWAIʻI ARBITRATION RULES

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Rule 1. THE COURT ANNEXED ARBITRATION PROGRAM.

The Court Annexed Arbitration Program (the Program) is a mandatory, non-binding arbitration program, as hereinafter described, for certain civil cases in the State of Hawaiʻi.

Rule 2. INTENT OF PROGRAM AND APPLICATION OF RULES.

(A) The purpose of the Program is to provide a simplified procedure for obtaining a prompt and equitable resolution of certain civil matters to be designated by the Judicial Arbitration Commission.

(B) These rules shall not be applicable to arbitration by private agreement or to other forms of arbitration under existing statutes, policies and procedures.

(C) These arbitration rules are not intended, nor should they be construed, to address every issue which may arise during the arbitration process. The intent of these rules is to give considerable discretion to the arbitrator, the Arbitration Administrator, the Arbitration Judge, and the Judicial Arbitration Commission. Arbitration hearings are intended to be informal, expeditious and consistent with the purposes and intent of these rules.

(Amended April 16, 1987, effective May 1, 1987; further amended effective March 20, 1997.)

Rule 3. THE ARBITRATION JUDGE.

(A) The Arbitration Judge for the Program in each judicial circuit shall be a Circuit Court Judge who shall be appointed by the Chief Justice. The Arbitration Judge may delegate his or her powers and duties under these rules to another Circuit Court Judge as may be needed for the efficient operation of the Program.

(B) The Arbitration Judge shall determine all disputed issues under these rules as hereinafter set forth, including, but not limited to, all disputed issues concerning the arbitrability of cases and the qualifications and acts of arbitrators.

(Amended April 16, 1987, effective May 1, 1987; further amended November 3, 1994 and November 14, 1994, effective January 2, 1995.)

Rule 4. THE JUDICIAL ARBITRATION COMMISSION.

(A) The Chief Justice shall establish a Judicial Arbitration Commission which will have the responsibility to develop, monitor, maintain, supervise and evaluate the Program for the State of Hawaiʻi.

(B) The Judicial Arbitration Commission shall include the Arbitration Judges of each judicial circuit and a representative to be designated by the President of the Hawaiʻi State Bar Association. The chairperson shall be designated by the Chief Justice. Additional members shall be appointed at the discretion of the Chief Justice. The Chief Justice may also appoint advisors to the Judicial Arbitration Commission, who shall not have the right to vote.

(C) The Judicial Arbitration Commission shall be responsible for the selection and training of arbitrators.

(D) The Judicial Arbitration Commission shall be responsible for the supervision and evaluation of the Arbitration Administrator in each judicial circuit.

(E) The Judicial Arbitration Commission shall interpret these rules prior to the appointment of an arbitrator in any case under the Program.

(F) The Judicial Arbitration Commission may recommend the adoption or amendment of rules and regulations to the Supreme Court for the implementation and administration of the program.

(Amended April 16, 1987, effective May 1, 1987; further amended November 3, 1994 and November 14, 1994, effective January 2, 1995.)

Rule 5. THE ARBITRATION ADMINISTRATOR.

The Arbitration Administrator for the Program in each judicial circuit shall be appointed by the Chief Justice and shall be responsible for the operation and management of the Program, as hereinafter set forth.

(Amended April 16, 1987, effective May 1, 1987; further amended November 3, 1994 and November 14, 1994, effective January 2, 1995.)

Rule 6. MATTERS SUBJECT TO ARBITRATION.

(A) All tort cases having a probable jury award value, not reduced by the issue of liability and not in excess of One Hundred Fifty Thousand Dollars ($150,000.00), exclusive of interest and costs, may be accepted into the Program at the discretion of the

Judicial Arbitration Commission.

(B) Any other civil case, regardless of the monetary value or the amount in controversy, may be submitted to the Program upon the agreement of all parties and the approval of the Arbitration Judge.

(C) Parties to cases submitted or ordered to the Program may agree at any time to be bound by any arbitration ruling or award.

(D) The Arbitration Judge may accept into, or remove from, the Program any action where good cause for acceptance or removal is found. The Court's decision in this regard is non-reviewable.

(Amended April 16, 1987, effective May 1, 1987; further amended effective March 20, 1997.)

Rule 7. RELATIONSHIP TO CIRCUIT COURT JURISDICTION AND RULES; FORM OF DOCUMENTS.

(A) Cases filed in, or removed to, the Circuit Court shall remain under the jurisdiction of that court for all phases of the proceedings, including arbitration.

(B) Except for the authority to act or interpret these rules expressly given to the arbitrator, the Arbitration Administrator, the Judicial Arbitration Commission, or the Arbitration Judge, all issues shall be determined by the Circuit Court with jurisdiction.

(C) Before a case is submitted or ordered to the Program, and after a Notice of Appeal and Request for Trial *De Novo* is filed, all applicable rules of the Circuit Court and of civil procedure apply. After a case is submitted or ordered to the Program, and before a Notice of Appeal and Request for Trial *De Novo* is filed, or until the case is removed from the Program, these rules apply.

(D) The calculation of time and the requirements of service of pleadings and documents under these rules shall be the same as under the Hawaiʻi Rules of Civil Procedure, except that service under these rules by the Arbitration Administrator may be made by facsimile transmission.

(E) Circuit Court Rule 12(q), and all rules ofcourt or of civil procedure requiring the filing of pleadings, remain in effect notwithstanding the fact that a case is under the Program.

(F) All dispositive motions shall be made to the Circuit Court as required by law or rule notwithstanding the fact that a case is under the Program.

(G) All documents required to be utilized or filed under these rules shall be in a form designated by the Arbitration Judge.

(H) Once a case is submitted or ordered to the Program all parties subsequently joined in the action shall be parties to the arbitration unless dismissed by the Arbitration Judge.

(Amended November 3, 1994 and November 14, 1994, effective January 2, 1995.)

Rule 8. DETERMINATION OF ARBITRABILITY.

(A) The court shall view all tort cases as arbitration eligible and automatically "in" the Program unless plaintiff certifies that his or her case has a value in excess of the $150,000 jurisdictional amount of the Program. Plaintiff shall file a request for exemption at the time the complaint is filed and such a request shall include a summary of facts that support plaintiff's contentions.

(B) Where exemptions from arbitration have been requested, the Arbitration Administrator shall review the contentions and evidence available and determine eligibility. The Arbitration Administrator may require a party to submit additional evidence to support the party's contentions. The Arbitration Administrator shall render a decision on the request for exemption, which may be appealed to the Arbitration Judge. Any appeal to the Arbitration Judge from the decision of the Arbitration Administrator shall be filed with the Arbitration Judge and served on all parties within ten (10) days from the date the decision is served. Any issue or information presented to the Arbitration Judge on appeal that was not presented to the Arbitration Administrator, will not be considered by the Arbitration Judge on appeal unless such issue or information could not have been presented to the Arbitration Administrator before the Arbitration Administrator rendered the decision. The Arbitration Judge's decision on appeal is non-reviewable.

(C) Subsequent to the filing of the complaint, any party who believes a case should be removed from, admitted or readmitted to the Program, shall file a request to remove, admit or readmit, with the Arbitration Judge. The request shall include a summary of the facts that support the party's contentions, and shall be served on all parties. The Arbitration Judge's decision on the request is non-reviewable.

(D) The Arbitration Judge shall make all final determinations regarding the arbitrability of a case when that issue is disputed by any party, and may hold a conference on the issue of arbitrability at the judge's discretion.

(E) The Arbitration Judge may, at the judge's discretion, impose sanctions of reasonable costs and attorney's fees against any party who without good cause or justification attempts to remove a case from the Program.

(Amended April 16, 1987, effective May 1, 1987; further amended January 9, 1990, effective January 9, 1990; further amended December 21, 2004, effective January 1, 2005.)

Rule 9. ASSIGNMENT TO ARBITRATOR.

(A) Parties may select and stipulate to a private arbitrator(s), who is an arbitrator not on the panel of the Program, or one who is on the panel but who has agreed to serve on a private basis. Such stipulation must be made within twenty (20) days after the appearance of defense counsel and must include a statement signed by the arbitrator(s) expressing his or her express willingness to arbitrate under the rules and procedures of the Court Annexed Arbitration Program and a duly signed arbitrator's oath.

(B) Any and all fees or expenses related to the use of a private arbitrator(s) shall be borne by the parties.

(C) Unless the Arbitration Administrator is notified of a stipulation for a private arbitrator(s) within the above twenty (20) day period, one (1) arbitrator will be assigned. If the assigned arbitrator is disqualified, another arbitrator shall be assigned.

(D) Any party may object, for good cause, to the assigned arbitrator. The objection, which shall be made in writing and state the specific grounds for the objection, shall be filed with the Arbitration Administrator and served on all parties within ten (10) days from the date of the assignment of the arbitrator. Any response to the objection shall be filed with the Arbitration Administrator and served on all parties within three (3) days after service of the objection. The Arbitration Administrator shall render a decision on the objection, which may be appealed to the Arbitration Judge. Any appeal to the Arbitration Judge from the decision of the Arbitration Administrator shall be filed with the Arbitration Judge and served on all parties within ten (10) days from the date the decision is served. Any issue or information presented to the Arbitration Judge on appeal that was not presented to the Arbitration Administrator, will not be considered by the Arbitration Judge on appeal unless such issue or information could not have been presented to the Arbitration Administrator before the Arbitration Administrator rendered the decision. The Arbitration Judge's decision on the appeal is non-reviewable.

(E) Where an Arbitrator is assigned to a case and subsequent thereto, an additional party is added, the party may object, for good cause, to the assigned arbitrator within ten (10) days from the appearance of the party in the case. Except as otherwise provided herein, the provisions of section (D) of this rule shall govern any objection, response, and appeal filed under this section (E).

(F) The above described method of selection of an arbitrator shall be followed in all the Judicial Circuits.

(Amended April 16, 1987, effective May 1, 1987; further amended January 9, 1990, effective January 9, 1990; further amended January 18, 1991, effective January 18, 1991; further amended October 18, 1993, effective November 15, 1993; further amended and effective May 22, 1996; further amended April 8, 2004 and effective July 1, 2004.)

Rule 10. QUALIFICATIONS OF ARBITRATORS.

(A) The Judicial Arbitration Commission shall create and maintain a panel of arbitrators consisting of attorneys licensed to practice in the State of Hawaiʻi and, in its discretion, qualified non-attorneys.

(B) Attorneys serving as arbitrators shall have substantial experience in civil litigation, and shall have been licensed to practice law in the State of Hawaiʻi for a period of five (5) years, or can provide the Judicial Arbitration Commission with proof of equivalent qualifying experience.

(C) Arbitrators shall be required to complete an orientation and training program following their selection to the panel and other additional training sessions or classes scheduled by the Judicial Arbitration Commission or Arbitration Administrator.

(D) Arbitrators shall be sworn or affirmed by the Chief Justice or his designee to uphold these rules of the Program, the laws of the State of Hawaiʻi, and the Code of Ethics of the American Arbitration

Association.

(E) An arbitrator who would be disqualified for any reason that would disqualify a judge under the Code of Judicial Conduct shall immediately resign or be withdrawn as an arbitrator.

(F) Any issue concerning the qualification of a person to serve as an arbitrator on the panel of arbitrators shall be referred to the Judicial Arbitration Commission for a final, non-reviewable determination.

(Amended April 16, 1987, effective May 1, 1987; further amended effective March 20, 1997.)

Rule 11. AUTHORITY OF ARBITRATORS.

(A) Arbitrators shall have the general powers of a court and may hear cases in accordance with established rules of evidence and procedure, liberally construed to promote justice and the expeditious resolution of disputes. These include, but are not limited to, the power:

(1) To administer oaths or affirmations to witnesses;

(2) To relax all applicable rules of evidence and procedure to effectuate a speedy and economical resolution of the case without sacrificing a party's right to a full and fair hearing on the merits;

(3) To decide procedural issues arising before or during the arbitration hearing, except issues relating to his or her qualifications as an arbitrator;

(4) To invite or order, with reasonable notice, the parties to submit pre-hearing or post-hearing briefs;

(5) To examine, after notice to the parties, any site or object relevant to the case;

(6) To issue subpoenas for the attendance of witnesses or production of documentary evidence;

(7) To determine the place, time and procedure to hear all matters;

(8) To interpret these rules in all proceedings before him or her;

(9) To find witnesses or parties in contempt and to impose sanctions as provided by the laws of the State of Hawaiʻi; and

(10) To attempt, with the consent of all parties in writing, to aid in the settlement of the case.

(B) Any challenge to the authority or the act of an arbitrator shall be made to the Arbitration Administrator in writing and state the specific grounds for the challenge. The challenge shall be filed with the Arbitration Administrator and served on the arbitrator and all parties within ten (10) days of the challenged act. Any response to the challenge shall be filed with the Arbitration Administrator and served on the arbitrator and all parties within three (3) days after service of the challenge. The Arbitration Administrator shall render a decision on the challenge, which may be appealed to the Arbitration Judge. Any appeal to the Arbitration Judge from the decision of the Arbitration Administrator shall be filed with the Arbitration Judge and served on the arbitrator and all parties within ten (10) days from the date the decision is served. Any issue or information presented to the Arbitration Judge on appeal which was not presented to the Arbitration Administrator, will be not considered by the Arbitration Judge on appeal unless such issue or information could not have been presented to the Arbitration Administrator before the Arbitration Administrator rendered the decision. The Arbitration Judge shall have the non-reviewable power to uphold, overturn or modify the decision of the Arbitration Administrator, including the power to stay any proceeding.

(Amended April 16, 1987, effective May 1, 1987; further amended April 8, 2004, effective July 1, 2004.)

Rule 12. STIPULATIONS.

Any stipulation between the parties relating to the conduct of the arbitration proceeding, or any factual matter therein, shall be in writing and signed by the counsel or parties, and filed with the arbitrator.

(Amended April 16, 1987, effective May 1, 1987.)

Rule 13. RESTRICTIONS ON COMMUNICATIONS.

(A) Neither counsel nor parties may communicate directly with the arbitrator regarding the merits of the case, except in the presence of, or with reasonable notice to, all of the other parties.

(B) No disclosure of any offer or demand of settlement made by any party shall be made to the arbitrator prior to the filing of an award without the agreement of all other parties.

Rule 14. DISCOVERY.

(A) Once a case is submitted or ordered to the Program, the extent to which discovery is allowed, if at all, is at the sole discretion of the arbitrator, except as provided in section (B) of this rule. Types of discovery shall be those permitted by the Hawaiʻi Rules of Civil Procedure, but these may be modified in the discretion of the arbitrator to save time and expense.

(B) A party may at anytime: (1) serve on other parties the standard form interrogatories and requests for production of documents, which the Judicial Arbitration Commission has approved; and (2) conduct, by agreement, additional formal or informal discovery. Any dispute arising out of the discovery permitted by this section (B) shall be determined by the arbitrator upon his or her assignments.

(Amended April 16, 1987, effective May 1, 1987; further amended October 18, 1993, effective November 15, 1993; further amended November 3, 1994, November 14, 1994, and March 13, 1995, effective March 28, 1995.)

Rule 15. SCHEDULING OF HEARINGS; PRE-HEARING CONFERENCES.

(A) All arbitrations shall take place and all awards filed no later than nine (9) months from the date of service of the complaint to all defendants, or the Order of Arbitration by the Arbitration Judge, unless said time is modified by the Arbitration Judge pursuant to this rule. Arbitrators shall set the time and date of the hearing within this period.

(B) The arbitration hearing date may be advanced or continued by the arbitrator for good cause upon written request from either party; however, a request for a continuance of the hearing beyond the above nine (9) month period may not be granted by the arbitrator until said arbitrator obtains an extension of the above nine (9) month period. Any request for extension of the above nine (9) month period must be made in writing to the Arbitration Judge by the arbitrator.

(C) Consolidated actions shall be heard on the date assigned to the latest case involved.

(D) Arbitrators and/or the Arbitration Administrator may, at their discretion, conduct pre-arbitration hearings or conferences. However, arbitrators shall conduct a pre-hearing conference within thirty (30) days from the date a case is assigned to an arbitrator.

(E) The arbitrator shall give immediate written notification to the Arbitration Administrator of any change of the arbitration date, any settlement or change of counsel.

(Amended April 16, 1987, effective May 1, 1987; further amended January 9, 1990, effective January 9, 1990.)

Rule 16. PREHEARING STATEMENT.

(A) At least thirty (30) days prior to the date of the arbitration hearing, each party shall file with the arbitrator and serve upon all other parties a Prehearing Statement. The Prehearing Statement shall state that the party submitting the statement will be ready to proceed with the hearing upon completion of the inspection and/or copying permitted in section (B) of this rule. The statement shall also contain, wherever applicable, the following information:

(1) Information about the party submitting the statement, including, at minimum:

(i) The name, address, telephone number, age, marital status and occupation of such party;

(ii) The name, address, telephone number, and place of registration, if such party is a general or limited partnership; or

(iii) The name, address, telephone number, and place of incorporation, if such party is a corporation.

(2) A statement of the facts which the party submitting the statement reasonably believes will be established at the hearing by such party;

(3) The name, address, telephone number and field of expertise of each expert, including all doctors, whom the party submitting the statement intends to call as a witness or use in any other manner at the hearing, and copies of their reports;

(4) The name, address and telephone number of all other witnesses the party submitting the statement intends to call at the hearing;

(5) A statement of the party's position on general damages;

(6) A statement of the party's position on special damages and an itemized list of all special damages claimed or disputed by such party; and

(7) A list of exhibits and documentary evidence anticipated to be introduced at the hearing by the party submitting the statement.

(B) Each party shall provide copies of all exhibits and documentary evidence to the arbitrator and upon request shall make all exhibits and documentary evidence available for inspection and copying by other parties, at least twenty (20) days prior to the date of the hearing.

(C) A party failing to comply with this rule, or failing to comply with any discovery order, may not present at the hearing a witness or exhibit required to be disclosed or made available, except with the permission of the arbitrator.

(D) Each party shall furnish the arbitrator at least twenty (20) days prior to the arbitration hearing copies of any pleadings and other documents contained in the court file which that party deems relevant.

(Amended November 3, 1994 and November 14, 1994, effective January 2, 1995.)

Rule 17. CONDUCT OF THE HEARING.

(A) The arbitrator shall have complete discretion over the mode and order of presenting evidence and the conduct of the hearing.

(B) No transcription or recording shall be permitted of the arbitration proceedings.

(Amended April 16, 1987, effective May 1, 1987.)

Rule 18. ARBITRATION IN THE ABSENCE OF A PARTY.

An arbitration may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain a continuance. The arbitrator shall require the party present to submit such evidence as he or she may require for the making of an award, and may offer the absent party an opportunity to appear at a subsequent hearing.

Rule 19. FORM AND CONTENT OF AWARD.

(A) Awards by the arbitrator shall be in writing, signed and on forms prescribed by the Judicial Arbitration Commission.

(B) The arbitrator shall determine all issues raised by the pleadings that are subject to arbitration under the Program, including a determination of comparative negligence, if any, damages, if any, and costs. The amount of damages that can be awarded is not limited to the jurisdictional amount for arbitration.

(C) Findings of Fact and Conclusions of Law are not required.

(D) After an award is made, the arbitrator shall return all exhibits to the parties who offered them during the hearing.

(Amended effective March 20, 1997.)

Rule 20. FILING OF AWARD.

(A) Within seven (7) days after the conclusion of the arbitration hearing, or thirty (30) days after the receipt of the final authorized memoranda of counsel, the arbitrator shall file the award with the Arbitration Administrator, who shall then serve copies of said award upon all parties. Application by the arbitrator to the Arbitration Administrator must be made for an extension of these time periods.

(B) Within the seven day period for filing an award, the arbitrator may file with the Arbitration Administrator an amended award to correct an obvious error in the award. Subsequent to this time, the arbitrator must obtain the approval of the Arbitration Administrator to file an amended award. The arbitrator's written request to the Arbitration Administrator shall state the reason(s) for the request**,** include the proposed amended award, and be served on all parties. Except as provided under section (C) of this rule, the arbitrator may not file an amended award that changes the arbitrator's decision on the merits. An amended award filed pursuant to this section (B) may modify an award only to correct an inadvertent miscalculation or description, or to adjust the award in a matter of form rather than substance.

(C) To file an amended award that includes any modification of substance, the arbitrator must obtain the approval of the Arbitration Judge. The arbitrator's written request to the Arbitration Judge shall state the reason(s) for the request**,** include the proposed amended award, and shall be served on the Arbitration Administrator and all parties.

(D) The Arbitration Administrator shall serve any amended award upon all parties.

COMMENTARY:

The December 21, 2004 amendment clarifies that Rule 20 authorizes the arbitrator to request and obtain leave of the Arbitration Administrator or Arbitration Judge to file an amended award. The rule is not intended to authorize parties to request modification of an arbitration award by the

Arbitration Administrator or Arbitration Judge.

(Amended April 16, 1987, effective May 1, 1987; rule further amended and commentary added December 21, 2004, effective January 1, 2005.)

Rule 21. JUDGMENT ON AWARD.

If, after twenty (20) days after the award is served upon the parties, no party has filed a written Notice of Appeal and Request for Trial *De Novo*, the clerk of the court shall, upon notification by the Arbitration Administrator, enter the arbitration award as a final judgment of the court. This period may be extended by written stipulation, filed with the Arbitration Administrator within twenty (20) days after service of the award upon the parties, to a period no more than forty (40) days after the award is served upon the parties. Said award shall have the same force and effect as a final judgment of the court in a civil action, but may not be appealed.

(Amended April 16, 1987, effective May 1, 1987; further amended November 3, 1994 and November 14, 1994, effective January 2, 1995; further amended April 8, 2004, effective July 1, 2004.)

Rule 22. REQUEST FOR TRIAL DE NOVO.

(A) Within twenty (20) days after the award is served upon the parties, any party may file with the clerk of the court and serve on the other parties and the Arbitration Administrator a written Notice of Appeal and Request for Trial De Novo of the action. This period may be extended, to a period of no more than forty (40) days after the award is served upon the parties, by stipulation signed by all parties remaining in the action and filed with the Arbitration Administrator within twenty (20) days after service of the award upon the parties.

(B) After the filing and service of the written Notice of Appeal and Request for Trial De Novo, the case shall be set for trial pursuant to applicable court rules.

(C) If the action is triable by right to a jury, and a jury was not originally demanded but is demanded within ten (10) days of service of the Notice of Appeal and Request for Trial De Novo by a party having the right of trial by jury, the trial de novo shall include a jury, and a jury trial fee shall be paid as provided by law.

(D) After a written Notice of Appeal and Request for Trial De Novo has been filed and served, it may not be withdrawn except by stipulation of all remaining parties or by order of the Arbitration Judge. The Arbitration Judge shall not allow withdrawal of a Notice of Appeal and Request for Trial De Novo over objection of any non-appealing party but may order that an objecting party be deemed an appealing party for purposes of these rules. The Arbitration Judge in allowing a withdrawal may do so upon such terms and conditions as the Court deems proper, including an order that the appealing party pay the attorneys' fees and costs incurred by non-appealing parties after service of the Notice of Appeal and Request for Trial De Novo. In the event a Notice of Appeal and Request for Trial De Novo is withdrawn pursuant to this rule and no other Notice of Appeal and Request for Trial De Novo remains, judgment shall be entered in accordance with Rule 21.

(Amended November 3, 1994, November 14, 1994 and December 21, 1994, partly effective January 2, 1995, fully effective February 1, 1995; further amended and effective May 22, 1996.)

Rule 23. PROCEDURES AT TRIAL DE NOVO.

(A) The clerk shall seal any arbitration award if a trial de novo is requested. The jury will not be informed of the arbitration proceeding, the award, or about any other aspect of the arbitration proceeding. The sealed arbitration award shall not be opened until after the verdict is received and filed in a jury trial, or until after the judge has rendered a decision in a court trial.

(B) All discovery permitted during the course of the arbitration proceedings shall be admissible in the trial de novo subject to all applicable rules of civil procedure and evidence. The court in the trial de novo shall insure that any reference to the arbitration proceeding is omitted from any discovery taken therein and sought to be introduced at the trial de novo.

(C) No statements or testimony made in the course of the arbitration hearing shall be admissible in evidence for any purpose in the trial de novo.

Rule 24. SCHEDULING OF THE TRIAL DE NOVO.

Every case transferred to the Program shall maintain the approximate position on the civil trial docket as if the case had not been so transferred, unless at the discretion of the court, the docket position is modified.

Rule 25. THE PREVAILING PARTY IN THE TRIAL DE NOVO; COSTS.

(A) The "Prevailing Party" in a trial de novo is the party who (1) appealed and improved upon the arbitration award by 30% or more, or (2) did not appeal and the appealing party failed to improve upon the arbitration award by 30% or more. For the purpose of this rule, "improve" or "improved" means to increase the award for a plaintiff or to decrease the award for the defendant.

(B) The "Prevailing Party" under these rules, as defined above, is deemed the prevailing party under any statute or rule of court. As such, the prevailing party is entitled to costs of trial and all other remedies as provided by law, unless the Court otherwise directs.

COMMENTARY:

The July 1, 1999 amendment makes clear that the allowance of costs to the prevailing party is not mandatory. The amendment is intended to vest the trial court with discretion in awarding taxable costs to avoid inequitable results. In weighing the equities, the trial court may consider factors such as the nature of the case, the conduct of the parties throughout the litigation, including arbitration proceedings, the amount and timing of settlement offers made by the parties, the amount of the judgment, and other relevant factors.

For example, when a defendant appeals an Arbitration Award and the plaintiff obtains a judgment which is 30% less than the award, based on the circumstances and equities of the case, the court may award taxable costs to the plaintiff although the defendant would be considered the "prevailing party" under Section (A).

As another example, when a plaintiff appeals a "zero" Arbitration Award and obtains a "nominal" or "insignificant" judgment, based on the circumstances and equities of the case, the court may award taxable costs to the defendant although the plaintiff would be considered the "prevailing party" under Section (A). Whether a judgment is "nominal" or "insignificant" is left to the sound discretion of the court.

(Amended November 3, 1994, November 14, 1994 and December 21, 1994, effective February 1, 1995; amended effective July 1, 1999.)

Rule 26. SANCTIONS FOR FAILING TO PREVAIL IN THE TRIAL DE NOVO.

(A) After the verdict is received and filed, or the court's decision rendered in a trial de novo, the trial court may, in its discretion, impose sanctions, as set forth below, against the non-prevailing party whose appeal resulted in the trial de novo.

(B) The sanctions available to the court are as follows:

(1) Reasonable costs and fees (other than attorneys' fees) actually incurred by the party but not otherwise taxable under the law, including, but not limited to, expert witness fees, travel costs, and deposition costs;

(2) Costs of jurors;

(3) Attorneys' fees not to exceed $15,000;

(C) Sanctions imposed against a plaintiff will be deducted from any judgment rendered at trial. If the plaintiff does not receive a judgment in his or her favor or the judgment is insufficient to pay the sanctions, the plaintiff will pay the amount of the deficiency. Sanctions imposed against a defendant will be added to any judgment rendered at trial.

(D) In determining sanctions, if any, the court shall consider all the facts and circumstances of the case and the intent and purpose of the Program in the State of Hawaiʻi.

(Amended November 3, 1994, November 14, 1994, and December 21, 1994, effective February 1, 1995.)

Rule 27. EFFECTIVE DATE.

These rules become effective as of February 15, 1986 for the circuit court of the first circuit; as of October 1, 1987 for the circuit court of the third circuit; as of October 15, 1987 for the circuit court of the second circuit; and as of November 1, 1987 for the circuit court of the fifth circuit.

(Amended September 28, 1987, effective October 1, 1987.)

Rule 28. SANCTIONS FOR FAILURE TO MEANINGFULLY PARTICIPATE IN ARBITRATION HEARING.

The Arbitration Judge, on the motion of any party filed and served within thirty (30) days after the arbitration award is served upon the parties by the Arbitration Administrator, shall have the power to award sanctions against any party or attorney for failure to participate in the arbitration hearing in a meaningful manner. Sanctions may include costs, expert fees and attorneys' fees reasonably incurred by all other parties for the arbitration hearing and in the prosecution of the motion for sanctions. These sanctions are independent of sanctions under Rule 26. The court may hold hearings as deemed appropriate. If the court determines that the motion was brought without good cause, it may award costs and attorney fees against the movant.

(Added November 3, 1994, amended November 14, 1994, effective February 1, 1995.)

Rule 29. DELETED.

(Master Mediation Pilot Project added November 22, 1994, effective April 1, 1995; amended and effective September 7, 1995; further amended effective April 1, 1996; further amended effective May 22, 1996; further amended effective March 20, 1997; further amended effective April 1, 1998; further amended effective March 31, 1999; expired by its terms on April 1, 2000.)